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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/485,903	03/31/00	DUPUIS	C 05725.0532

HM22/0130  
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EXAMINER
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WELLS, L

ART UNIT	PAPER NUMBER
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1619

DATE MAILED: 01/30/01

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/485,903

Applicant(s)

DUPUIS ET AL.

Examiner

Lauren Q Wells

Art Unit

1619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 7/20/00.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 18-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 18-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 18-45 have been presented for examination and will be reviewed on their merits.

#### ***Specification***

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 19-21, 23-34, 29, and 34 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 19, 29, 23, 24, 29, and 34 are rejected for use of improper Markush groups. See MPEP 2173.05(h) for examples of proper conventional or alternative Markush-type language. Claim 21 recites the limitation "alkyl radicals" in the first line of the claim. There is insufficient antecedent basis for this limitation in the claim.

#### ***Claim Rejections - 35 USC § 102***

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

1. Claims 18-19, 20-21, 24-31, 35-36, 39, 40-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Dubief et al. (WO 9221316).

Dubief et al. teach hair treatment compositions, which meet the instant composition and method claims 18-19, 20-21, 24-31, 35-36, 39, 40-45. Insoluble polymer particles disclosed include vinyl polyacetate. Polydimethylsiloxane disilanols disclosed include dimethiconol. See

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page 1, line 5-page 6, line 2; page 9, line 6-page 10, line 33; page 12, line 16-page 15, line 19; page 20. US 6,024,946 was relied upon as a translation of WO 9221316.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 18-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dubief et al. in view of Blankenburg et al (6,153,179) and Audousset et al. (6,106,577).

Dubief et al. is applied as discussed above. The reference lacks certain embodiments of the insoluble polymer particle and propellants.

Blankenburg et al. teach hair setting lotions. Insoluble polymer particles disclosed include tert-butyl acrylate/ethyl acrylate/methacrylic acid. Propellants disclosed include propane, butane, dimethyl ether, nitrogen, nitrous oxide, and carbon dioxide. See Col. 1, lines 3-26; Col. 1, line 35-Col. 4, line 30; Col. 6, line 54-Col. 7, line 3.

Audousset et al. teach compositions containing film-forming polymer dispersions for use as hair dyes. Insoluble polymer particles disclosed include methacrylic acid/ethyl acrylate/methyl methacrylate terpolymers and methyl methacrylate/butyl acrylate/hydroxyethyl methacrylate/methacrylic acid tertrapolymers. See Col. 1, line 7-Col 4, line 12. US 6,106,577 was used as a translation of WO 9718795.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have substituted the insoluble polymer particles of Blankenburg et al. or Audousset et al. for those of Dubief et al. because of the similar expectation of achieving film forming properties.


#### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lauren Q Wells whose telephone number is (703) 305-1878. The examiner can normally be reached on M-F (7-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash can be reached on (703) 308-2328. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556 for regular communications and (703) 308-4556 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1234.

Lauren Q. Wells  
January 16, 2001

  
DIANA DUDASH  
SUPERVISORY PATENT EXAMINER  
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